

C O P Y

in opinion

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April 25, 1958

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CONCORD, N.H.

Lawton B. Chandler, Secretary
State Tax Commission
State House
Concord, New Hampshire

Dear Mr. Chandler:

Under date of April 8, 1958, you noted that the Public Service Company of New Hampshire in submitting its statement of estimated income for the year 1958 as required in RSA 83-A (Laws 1958, c. 5) stated that it had not included, in connection with the item on the form entitled "Federal Income Tax Paid or Payable under Provisions of Internal Revenue Code (Subtitle A, Title 26 U.S.C.) for the Calendar Year 1957" the net deferred income tax arising from the accelerated amortization of defense facilities. The reason given by the Company for the exclusion of this deferred federal income tax is that such amount has not been paid and will not be paid to the federal government under the federal statute cited on account of 1957 operations.

You ask if the Company is correct in its treatment of this item; and we respond in the affirmative.

The language of RSA 83-A:1:III is unequivocally clear with respect to the treatment of income tax items in the determination of the tax base, the "[i]ncome derived from the exercise of franchise". The taxpayer is forbidden to exclude

"amounts paid or payable to the United States under the income tax provisions of the Federal Internal Revenue Code (Subtitle A, Title 26, USC)."

The test to be applied, then, is a simple one. The inquiry is: precisely what were the amounts so paid or payable during or with respect to the year in question?

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A. Lawton B. Chandler

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Under pertinent orders of the Public Utilities Commission the Company has been allowed to continue the collection of rates from its customers at a level sufficiently high to meet its federal income tax liability as if such liability were computed on the basis that those of its properties subject to accelerated amortization as defense facilities were not so subject but were being depreciated at a normal rate. The excess of such collections arising out of the accelerated amortization features over the amount of the federal income tax actually paid is required by order of the Commission to be held in a special restricted account to be used after the defense facilities shall have been fully amortized with a concomitant increase in the federal income tax due to the fact that a depreciation allowance will no longer be available with respect to these facilities.

This is seen, then, to be a rate-making and accounting procedure. The moneys set aside in the restricted account relating to the accelerated amortization of defense facilities are not currently paid or payable to the United States under the Internal Revenue Code. In such circumstance, the Company rightfully treats such moneys as not within the exception found in RSA 83-A:1:III.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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